IN THE HIGH COURT OF DELHI AT NEW DELHI

Writ Petition (C) No. 3797 of 2006

Date of Decision: May 31, 2007

Anu Mohela ... ... Petitioner
Through: Mr.Umesh Sharma, Advocate

Versus

Union of India & Ors. ... ... Respondent
Through: Ms.Raman Oberio, Advocate for UOI
Mr.Prashant Khatana, Advocate for respondent No.2

CORAM:

HON'BLE MISS JUSTICE REKHA SHARMA

1. Whether Reporters of the Local Papers may be allowed to see the judgment? Yes

2. To be referred to the Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

REKHA SHARMA, J.

On July 23, 2004, National Council for Promotion of Urdu Language (hereinafter referred to as 'the respondent') advertised one post of Junior Stenographer carrying the pay scale of Rs. 4000-100-6000. Pursuant thereto, the respondent undertook the selection process which included holding of a written test, skill test and interview. A panel of two candidates was prepared, one of whom, Ijju Sumant was placed at No. 1 while the other Anu Mohela (hereinafter referred to as 'the petitioner') at No. 2. Consequent to the selection,

Ijju Sumant joined the service on February 4, 2005. However, three months thereafter on May 16, 2005, he resigned. Upon his resignation, on June 23, 2005, the respondent sent an e-mail message to the petitioner requesting her to visit its office on June 24, 2005. As desired, she went to the office and upon her visit she was asked to join as Junior Stenographer (English) with effect from June 29, 2005 which she did and continued to work till November 30, 2005. Thereafter, her services were discontinued. Aggrieved by the said action of the respondent, she has preferred the present writ petition.

According to the petitioner, after Ijju Sumant resigned from the post, she had a legitimate claim to be appointed against the vacancy caused by his resignation being Number 2 on the panel. She has alleged that though she was asked to work on the post but she was not given any appointment letter and when she requested for issuance of the same, the respondent without assigning any reason disengaged her w.e.f. December 1, 2005. She has further alleged that ignoring her claim to the post, the respondent is proposing to fill up the same from a departmental candidate. Therefore, she has prayed for a writ of mandamus in the nature of a direction to the respondent to issue appointment letter to her on the basis of selection made pursuant to the advertisement published in the Employment News of June, 2004 and has further prayed for a direction restraining the respondent from filling up the post from a departmental candidate.

The facts as stated by the petitioner have not been disputed by the respondent. What has been disputed is the claim of the

petitioner that upon resignation of Ijju Sumant, she was entitled to be appointed to the post on regular basis.

As per the respondent, after the appointment of Ijju Sumant to the post, the recruitment process that was initiated pursuant to the advertisement of June 26, 2004 came to an end and attained finality for all purposes. Consequently, the panel prepared thereunder also ceased to exist. Therefore, it was submitted that the vacancy which was caused upon the resignation of Ijju Sumant had to be treated as a fresh vacancy and could only be filled in terms of the Recruitment Rules which provides for filling up of the post by promotion failing which by direct recruitment. Hence, it was the turn of the departmental candidates to be considered for the post. However, as the process of promotion was likely to take some time, the petitioner was asked to take up the job in the interregnum not as a regular Junior Stenographer but purely on contract basis as a *pro-tem* measure on a consolidated remuneration of Rs. 7,000/- per month (calculated on the basis of basic pay plus DA) without any other allowances which are normally payable in case of appointment on regular basis. The petitioner, it was stated was fully aware that her appointment was not regular but on contractual basis. She has been receiving salary from July till November, 2005 which was not as per the pay-scale and she had been appending her signatures on the salary bill as a contractual employee like many others who were similarly engaged like her. Therefore, it was further stated that it was not open to her to contend that she was given an impression that she would be

issued the appointment letter.

In the above facts and circumstances, the question which arises for consideration is whether after the appointment of Ijju Sumant, the selection process which was initiated pursuant to the advertisement dated July 23, 2004 came to an end?

The answer is not far to seek. It is found in the judgment of the Supreme Court in State of Punjab Vs. Raghbir Chand Sharma and another (2002) 1 SCC 113. The Apex Court was dealing with a similar situation. In the said case, the State of Punjab had invited applications for the post of Assistant Advocate General. From amongst the applicants, a panel of three candidates was made by the Committee which had interviewed them. The respondent was placed at Sr. No. 3 in the panel. The first in the panel was appointed and joined the service but resigned after about a month. The second candidate on the select panel by his own letter expressed that he was not interested and even if offered, would not accept the appointment. Thereupon, the State filled the post by promotion from a lower post. The third on the panel staked his claim to the post but it was not accepted whereupon he preferred a writ petition in the Punjab & Haryana High Court which was allowed. Aggrieved by the order of the High Court, the State came to the Supreme Court. The Supreme Court reversed the order of the High Court and held as under:-

> "As rightly contended for the appellant State, the notification issued inviting applications was in respect of one post and the first candidate in the select panel was not only offered but on his

> acceptance of offer came to be appointed and it was only subsequently that he came to resign. With the appointment of the first candidate for the only post in respect of which the consideration came to be made and select panel prepared, the panel ceased to exist and has outlived its utility and, at any rate, no one else in the panel can legitimately contend that he should have been offered appointment either in the vacancy arising on account of the subsequent resignation of the person appointed from the panel or any other vacancies arising subsequently."

The facts of the present case are almost identical to the afore-mentioned judgment of the Apex Court. Here also the selection was made for one post and a panel was prepared as in the case before the Supreme Court. In this case too, the first person on the select panel resigned the post after joining. The Supreme Court, as has been noticed above has held that after the appointment of the first candidate for the only post, the panel ceases to exist. I am bound by the judgment of the Supreme Court. Accordingly, following the same, I hold that the petitioner has no right to the post of Junior Stenographer (English) on the basis of her selection pursuant to the advertisement published in the Employment News of June, 2004. The writ petition is accordingly dismissed.

May 31, 2007. **REKHA SHARMA, J.**
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